

**NATURAL RESOURCES COMMISSION**  
**Meeting Minutes**  
**November 28, 2007**

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at the Town House, Hearing Room, 22 Monument Square, Concord, MA at 7:00 p.m. on Wednesday, November 28, 2007. The following Commissioners were present: Montgomery Lovejoy (acting Chair), Jamie Bemis, Steve Verrill and George Lewis. Delia Kaye, Natural Resources Administrator; and Cynthia L. Gray, Natural Resources Administrative Assistant were also present.

**CONTINUANCES:**

**TOWN OF CONCORD – Railroad Right-of-Way (Bruce Freeman Rail Trail) / ANRAD**  
– Request for confirmation of wetland resource areas, **DEP File #137-948**

Montgomery Lovejoy announced that the Applicant requested a continuance of the public hearing to December 5<sup>th</sup> because not all Commissioners are able to attend the November 28<sup>th</sup> meeting. Luke Legere of McGregor Associates, representing, a “coalition of concerned citizens”, requested that the Applicant continue to December 12<sup>th</sup> or December 19<sup>th</sup> because Mr. Legere and Gregor McGregor were unable to attend on December 5<sup>th</sup>. December 12<sup>th</sup> is not a regularly scheduled NRC meeting, so the Applicant agreed to continue to December 19<sup>th</sup>.

**NEW APPLICATIONS:**

**SLOAN - 309-317 Garfield Road / NOI -Improvements to an existing common driveway, portions of which are located within 100 feet of Bordering Vegetated Wetlands, DEP File #137-874**

Rich Harrington of Stamski and McNary appeared together with Applicant, John Sloan. Mr. Sloan holds a driveway easement over land owned by Joyce Lawrence, but the Wetland Protection Act regulations do not recognize an easement as property ownership. When the NOI was originally filed, the Commission was unable to open the hearing because the application was not complete without signature from the property owner. After appeal to DEP, DEP agreed with the NRC on its interpretation of the WPA regulations. Upon further appeal to DALA, the case was remanded to the NRC.

Rich Harrington noted the width of the driveway to be 12 feet to accommodate the Planning Board decision to accommodate fire equipment. The Planning Board Decision dated September 8, 2005 states “that the pavement shall be consistently 12 feet wide with an additional 2 feet cleared area maintained on each side of the pavement to provide adequate area for snow storage; and that an agreement for maintaining the 2 foot wide cleared area and snowplowing the private way shall be provided.” John Sloan stated that Building Commissioner, John Minty, had sent out the fire truck to test access to the site. John Sloan noted that in the past, the road had narrowed with snow and it was requested that there be lead

way on either side of the roadway. Delia Kaye noted snow banks as opposed to snow storage. John Sloan indicated that as of right now, the driveway condition is a public safety problem.

The wetlands were flagged by David Crossman of B & C Associates. The common driveway is close to the wetlands (in some locations as close as 2 feet). Filter mitts could be used as an alternative to silt fence and hay bales. Work is scheduled to commence in June/July next year.

Jamie Bemis noted that the Commission had recently requested that a property owner reduce his driveway width to 10 feet, and that this was allowed by the Fire Department. There was discussion on whether the 12-foot driveway was required for a subdivision road. Delia Kaye noted that staff would verify with the Planning Board. Rich Harrington agreed to provide the amount of new impervious in the 100-foot buffer zone. Any work to remove invasive species as part of the clearing along the roadway will be approved by the Commission or the Administrator.

This hearing was continued to December 19, 2007 at which time the Commission expects to close the hearing and issue the permit.

**ABC CESSPOOL CO., INC.** – 324 Nashoba Road / **NOI** – Replacing a failed septic system servicing a single-family dwelling within the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-954**

Dick Dolan appeared as Applicant. The Applicant has received a Board of Health variance. The limit of work is approximately 35 feet by 26 feet (total excavated area). The limit of work was sketched on the plan at the hearing. Delia Kaye noted a potential vernal pool and asked if staff could contact the homeowner in the spring to look for vernal pool species.

This hearing was continued to December 5, 2007 at which time the Commission expects to close the hearing and issue the permit.

**DESIGN & BUILD ASSOCIATES (Bedrosian)** - 381 Thoreau Street / **NOI** – After-the-fact filing for construction of a single-family dwelling with associated fill, grading and paving within the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-957**

Matthew Hamor of Polaris Engineering Corporation appeared on behalf of the Applicant. The contractor was not aware of the 100-foot buffer zone at the time work commenced. An existing fence that could have served as a limit of work was removed, and some fill and grading occurred in the outer buffer zone. Matthew Hamor indicated that filter mitts were being installed the next day, Thursday, November 29, 2007. A variable height retaining wall (3- to 4-foot high and up to 8 feet in some spots) is proposed. A 3-foot by 4-foot stone trench is proposed to handle stormwater runoff. A trench detail and location plan will be provided to staff. Matthew Hamor indicated that the trench could hold considerable volume. Stockpiling would be graded and stabilized next week. The work would be done using a backhoe and bobcat with a loader. The premises consist of sandy soils. Delia Kaye noted that no work except for site stabilization was permitted until an Order of Conditions was issued.

This hearing was continued to December 5, 2007 at which time the Commission expects to close the hearing and issue the permit.

**NASHAWTUC COUNTRY CLUB – 1861 Sudbury Road / NOI - Installation of a new irrigation pump and installing electronics on an existing platform in the irrigation pond adjacent to the 17<sup>th</sup> green, and demolition of an old platform and artificial berm within Land Under Waterbodies and Waterways, 100-foot Buffer Zone to Bordering Vegetated Wetland, and Bordering Land Subject to Flooding, DEP File #137-958**

Mike Toohill of ENSR Corporation appeared on behalf of the Applicant. Mike Toohill stated the Applicant would be replacing the overhead turbine pump with a submersible pump. The existing pump structure is located in the floodplain. There was a deep hole in the pond for the original draw. Three outriggers would sit on the bottom of the pond. Buoys would hang on the pump in order to pull it out if it needed repair. A crane would work in uplands south of the existing pump structure to install the new pump, and to remove the old pump and the concrete pad. The crane would also be used to remove the old concrete pad. No Bank will be disrupted for the proposed work. The berm to be excavated is south of the pond. Regrading and planting would be done south and east of the pump. Delia Kaye requested the Applicant provide a plan showing the spot grades. Montgomery Lovejoy asked about Land Under Waterbodies and what would be impacted. Mike Toohill stated 125 square feet. Delia Kaye requested the Applicant submit a revised page 3 of the Notice of Intent. Delia Kaye also requested that the Applicant show the wetland flagging "A" series on the plan (Sheet 2) and noted that the Commission would likely require that a wetland scientist oversee the work. Mike Toohill indicated that this was a reasonable request.

This hearing was continued to December 19, 2007 at which time the Commission expects to close the hearing and issue the permit, pending receipt of revised plans.

#### **CLOSE HEARINGS / ISSUE PERMITS:**

**ESTABROOK ROAD NOMINEE TRUST – OOC - 55 Estabrook Road & 33 Liberty Street, DEP File #137-951**

Attorney Gregor McGregor of McGregor & Associates, Tim Santos of Holmes & McGrath, and Ted Dierker, Landscape Architect of Oslund and Associates appeared on behalf of the Applicant. Attorney Gregor McGregor stated that Special Condition #27 was ambiguous, and might require further NRC review. Attorney McGregor requested one month on both sides of the construction dates of December 15 and March 15 for work requiring use of heavy equipment in resource areas or the 25-foot No Disturb Zone so as not to have to file an Amendment. Delia Kaye read her e-mail to Luke Legere dated November 28, 2007, which states "This window was specifically selected to ensure that ground conditions are hard or frozen, which is typically not the case in October or April. If conditions remain frozen outside the window in the OOC, the caveat in Special Condition #27 allows for flexibility to increase the work duration. No Amendment would be required. We work with Contractors on these types of issues all the time, it typically is a matter of a phone call to ensure agreement, and possibly a site visit." The Commission concurred with Delia Kaye's e-mail. Gregor McGregor asked for reassurance his request would be included for the record in the minutes.

Jamie Bemis moved to close the hearing. George Lewis seconded. All so voted. Jamie Bemis moved to approve Findings A & B. Steve Verrill seconded. All so voted. Jamie Bemis moved to issue a standard Order of Conditions with Special Conditions 19-61. George Lewis seconded. All so voted.

**BENTLEY BUILDING CORP. (White) – OOC - 14A Strawberry Hill Road, DEP File #137-940**

This project involves creation of five lots for constructing four single-family dwellings and one lot for associated site work only, together with associated utilities, grading and the installation of an emergency drainage system overflow pipe, all within the 100-foot Buffer Zone to Bordering Vegetated Wetland.

Rich Harrington of Stamski and McNary appeared together with Applicant, Mark White. Rich Harrington noted concern with proposed Special Condition #19 relative to the Conservation Restriction. Rich Harrington requested that the Natural Resources Commission include the Conservation Restriction language in their recommendation to the Zoning Board of Appeals instead of requiring completion of a Conservation Restriction in the Special Conditions. Delia Kaye noted that the Conservation Restriction would need to be completed before a Certificate of Compliance could be issued and that the Conservation Restriction was, in fact, part of the overall development. She also noted that this language was typical in other Orders issued by the Commission. Montgomery Lovejoy stated his involvement as a member of the Conservation Restriction Stewardship Committee and that it was his belief that there was nothing that would hinder approval as the Conservation Restriction would need the approval of the Board of Selectman before it was forwarded to the State for approval. Delia Kaye noted that the Division of Natural Resources is in the process of creating more of a coordinated effort with the Zoning Board of Appeals and the Planning Board to effectively track proposed and completed Town Conservation Restrictions. Delia Kaye agreed to provide another recommendation letter to the Zoning Board of Appeals.

This hearing was continued to December 5, 2007 in order for Applicant, Mark White to speak with his attorney, Thomas Falwell, relative to the Conservation Restriction.

**TRITSCH – OOC - 233 Heath's Bridge Road, DEP File #137-955**

Jamie Bemis moved to close the hearing. George Lewis seconded. All so voted. Jamie Bemis moved to approve Findings A & B. Steve Verrill seconded. All so voted. George Lewis moved to issue a standard Order of Conditions with Special Conditions 19-42. Steve Verrill seconded. All so voted.

**ROOS – OOC - 36 Wood Street, DEP File #137-956**

George Lewis moved to close the hearing. Steve Verrill seconded. All so voted. Jamie Bemis moved to issue a standard Order of Conditions with Special Conditions 19-42. George Lewis seconded. All so voted.

**OVERALL – AMENDED OOC - 404 Monument Street, DEP FILE #137-921**

Jamie Bemis moved to close the hearing. Steve Verrill seconded. All so voted. Jamie Bemis noted the Findings had been previously approved. Jamie Bemis moved to issue an Amended Order of Conditions as written. George Lewis seconded. All so voted.

**CERTIFICATES OF COMPLIANCE:**

**TRITSCH – 233 Heath's Bridge Road, DEP File #137-823**

Steve Verrill moved to issue a Certificate of Compliance. Jamie Bemis seconded. All so voted.

**DRISCOLL – 80 Ayrshire Lane, DEP File # 137-934**

Steve Verrill moved to issue a Certificate of Compliance. George Lewis seconded. All so voted.

**OTHER BUSINESS:**

**Ware/Conceptual PRD at 201 Independence Road – Informal Presentation**

Rich Harrington of Stamski & McNary appeared together with builder, Michael Kenney.

Rich Harrington made an informal presentation outlining the scope of the project. Rich Harrington noted that one year ago, a feasibility study had been done. Four different concept plans were drawn. Concept Plan 1 (Subdivision) reflected 11 subdivision lots with split zoning. Concept Plan 2 reflected a 6-acre project with six (6) proposed residential lots plus the existing house would remain on the premises. Homes would be tied in to Town water and have individual septic systems. Concept Plan 3 (Comprehensive Permit) was compiled in November 2006. Concept Plan 4 (Planned Residential Development (PRD)) reflected an existing trail, the premises being flagged by David Crossman of B & C Associates with fifteen (15) units being proposed which units would have a common leaching field. A Notice of Intent would be required for Concept Plan 4. In August 2007, the Applicant filed a package with Natural Heritage and Endangered Species Program (NHESP). NHESP indicated the Blanding Turtle species on site and noted their preference to Concept Plan 4. Rich Harrington noted that a Special Permit process would be lengthy but that this project would tie into other Open Space already in existence.

Steve Verrill asked if the 6-acre parcel would incorporate the house as part of the PRD. Rich Harrington indicated that it would be part of the through road. Delia Kaye stated concern that any development within 100 feet of Gowing Swamp would alter the characteristics of the quaking bog, a unique ecological system in Concord. She also pointed out that the majority of the land to be developed was a wooded parcel that, providing upland habitat to the two vernal pools in the area. Jamie Bemis noted this parcel as a pristine area. Betsy Sluder of the League of Women Voters asked if the proposed project would incorporate a common septic system and if so, who would be responsible for maintaining it, such as a homeowner's association. Rich Harrington stated that 3.03 acres would be set aside as Open Space, which exceeds the Open Space percentage required by the Planning Board. Delia Kaye requested that the Applicant consider a higher percentage of upland in the Open Space parcel, noting that wetlands already posed a development restriction, and it was more important to protect the

uplands in the Open Space parcels. Rich Harrington noted the coarse sand and gravel as terracing would be done to level out the septic area. Patricia Granger, 21 Edmonds Road, asked about the amount of square footage for each building. Michael Kenney noted 5,000 to 6,000 square feet for triplexes; 4,000 to 5,000 square feet. for duplexes and \_\_\_ s.f. for single-family units. Louise Berliner, 179 Independence Road, and Stanly Black, 17 Edmonds Road, appeared after the presentation. Delia Kaye quickly gave them a briefing on the conceptual designs.

### **Bruce Freeman Rail Trail – Surface Treatment**

Delia Kaye enclosed surface treatment information into Commission packets this evening for review, and stated that the Bruce Freeman Rail Trail Advisory Committee would be considering surface treatments at their November 29, 2007 meeting. The materials included screening criteria for selecting appropriate surfaces, as well as a range of treatment alternatives, from asphalt to a plant resin binder which is relatively new.

Jamie Bemis asked about the possibility of having different surfaces in different areas. It was generally agreed that was appropriate, depending on the landscape context. Delia Kaye noted her concern with runoff issues with asphalt, as well as its incompatibility with sensitive resources, and concern with sedimentation and erosion of stone dust. Steve Verrill asked if the right-of-way needed to be followed as this question came up at Special Town Meeting. Stanly Black, Board of Selectman, commented that additional funding would most likely occur in FY '09 for further design. It is the intention of the Board of Selectman to bring an article before Town Meeting with regard to the 25 percent design. Mike Beer, 393 Old Marlboro Road, asked if the Commission and/or staff had seen the Bruce Freeman Rail Trail Environmental Evaluation of the Existing Abandoned New Haven Line Rail Corridor in Concord. Mike Beer left a copy with Delia Kaye and indicated he would obtain more copies for Commission members. There was discussion of when a decision on surface treatment was appropriate. George Lewis indicated that it might be best to wait for the Notice of Intent filing to make recommendations in order to stay focused on the Natural Resource Commission's area of expertise.

### **Chair Coordination Meeting – December 1, 2007**

The Commission agreed that Alexander Easterday and Montgomery Lovejoy would coordinate as to who might attend the breakfast meeting. It was suggested that the Commission keep the momentum going with reference to the proposed Wetland Bylaw.

### **Community Preservation Committee Applications**

A public hearing is scheduled for Thursday, November 29, 2007 for comment on all CPC applications. Delia Kaye mentioned that she, Katie Holden, and Montgomery Lovejoy, would be attending on behalf of the Natural Resources Commission, and urged Commissioners to attend if possible.

### **Robb Conservation Restriction**

This Conservation Restriction is being presented to the Board of Selectman Monday evening, December 3, 2007. Gordon Bell will be in attendance with the possibility of Hasso Ewing attending on behalf of the Conservation Restriction Stewardship Committee.

**Kittredge-77 Westford Road (Request for Superseding Determination of Applicability)**

Division of Natural Resources staff were present for a site visit with DEP and the Applicant on this day. The tree cutting issue is still under review by the Department of Environmental Protection (DEP).

**Concord Wold, LLC – Vacant land behind 110 Commerford Road (Request for Superseding Determination of Applicability)**

Several Commissioners and DNR staff attended a site visit on November 19, 2007. No feedback has been received to date from DEP.

**Wetland Bylaw Presentation to League of Women Voters**

Tentatively scheduled for the morning of February 6, 2008. Staff to follow-up with Betsy Sluder to confirm the date and time.

**Approve October 3, 2007 Meeting Minutes**

Steve Verrill moved to approve the October 3, 2007 meeting minutes as amended. Jamie Bemis seconded. All so voted.

**Approve October 17, 2007 Meeting Minutes**

Jamie Bemis moved to approve the October 17, 2007 meeting minutes as amended. George Lewis seconded. All so voted.

**Approve October 29, 2007 Meeting Minutes - tabled**

**Approve November 14, 2007 Meeting Minutes - tabled**

**Approve July 13, 2007 Wetland Bylaw Working Meeting Minutes**

Jamie Bemis moved to approve the July 13, 2007 Wetland Bylaw Working Meeting Minutes as written. George Lewis seconded. All so voted.

**Approve November 9, 2007 Wetland Bylaw Working Meeting Minutes**

George Lewis moved to approve the November 9, 2007 Wetland Bylaw Working Meeting Minutes. Jamie Bemis seconded. All so voted.

The meeting adjourned at 10:00 p.m.

Respectfully submitted,

Delia R. J. Kaye, Natural Resources Administrator

Cynthia L. Gray, Natural Resources Administrative Assistant